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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/572,902	09/06/2006	Ole Birch	00660.0325-US-WO	4725
22865	7590	09/15/2008		
Altera Law Group, LLC 220 S 6 St Suite 1700 Minneapolis, MN 55402			EXAMINER PAUL, DISLER	
			ART UNIT 2615	PAPER NUMBER
			MAIL DATE 09/15/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/572,902

**Applicant(s)**

BIRCH, OLE

**Examiner**

DISLER PAUL

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF 298)  
Paper No(s)/Mail Date \_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_

**DETAILED ACTION**

***Response to Arguments***

The Applicant's argument for overcoming Hollemans based on the foreign priority has not been properly established. Thus, the examiner maintains rejection under Hollemans et al.. However, in view of the "having the three sub-channels in star configuration" is persuasive. Thus, a new office action is issued.

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim1 is rejected under 35 U.S.C. 112, second paragraph, as failing to set forth the subject matter which applicant(s) regard as their invention. In regard to claim 1 the applicant's claim of wherein "control knob may be adapted in dependence of orientation" is not positively further limiting the subject matter, and thus such claim fail to particularly point out/ claim the subject matter.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of 35 U.S.C. 102(e) which forms the basis for all obviousness rejections set forth in this Office action:

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section

351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-2, 4-5, 7 are rejected under 35 U.S.C. 102(e) as being anticipated over Hollemans et al. (US 2007/0036363 A1).

Re claim 1, Hollemans et al. disclose of the headset having an electrical circuit comprising a circuit wherein the headset has a number of control knobs for adjusting the electrical properties of the headset, and wherein the functions of the control knobs *may be adapted* in dependence on the orientation of the headset, (fig.4-5, page 3 par[0040], page 2 par[0033], page 1 par[0015]/Hollemans is capable of also doing above and further please see note), wherein the circuit has incorporated therein a gravitation switch which is adapted to switch the functions of the control knobs, said gravitation switch comprising at least one elongated channel that houses a moveable conducting object, and that through-platings are provided at the ends of the channel (fig.4-5, page 1 par[0024], page 5 par[0083]/conducting balls through earpiece at channel ends).

\*note, in furthermore (the limitation as in *may be adapted* in dependence of orientation of headsets is not further positively limiting the claim, and thus, as long as Hollemans is capable of doing the above, it meets the recited limitations.)

Re claim 2, the headset according to claim 1, wherein the channel is oriented vertically (fig.2, [0081]/mirror plane with channel in vertical symmetry).

Re claim 4, the headset according to claims 1, wherein the conducting object is formed by a ball or a cylinder of conducting rubber (par[0024,0083]).

Re claim 5, the headset according to claims 1, wherein the number of control knobs is two, and that the gravitation switch comprises the channel with the conducting object which, when the conducting object is at one end of the channel, controls a switching circuit which will cause the uppermost control knob to perform a first function and the lowermost one to perform a second function, and when the gravitation switch is at the opposite end of the housing, corresponding to the uppermost control knob switching to being the lowermost control knob and the lowermost control knob to being the uppermost control knob, then the switching circuit will cause the uppermost and lowermost control .knobs to still perform the first function and the second function, respectively (fig.1 wt (106-107), par[0024,0083]/ball to close the circuit at the points of contact in the housing, wherein the knobs perform function dependent on orientation.)

Re claim 7, the headset having an electrical circuit comprising a circuit comprising a plurality of controls for adjusting the electrical properties of the headset, and wherein the functions of the controls change function in accordance with the orientation of the headset (fig.4-5, page 3 par[0040], page 2 par[0033], page 1 par[0015]), wherein the circuit has incorporated therein a gravitation switch which is adapted to switch the

functions of the controls to remain in the same orientation regardless of whether the user wears the headset on the right or left ear, said gravitation switch comprising at least one elongated channel that houses a moveable conducting object, and contacts are provided at the ends of the channel to cause the functions to be swapped according to the ear on which the headset is worn (fig.1,4-5, page 1 par[0024], page 5 par[0083]/conducting balls through earpiece at channel ends).

\*note, in furthermore (the limitation as in *is adapted* in dependence of orientation of headsets is not further positively limiting the claim, and thus, Hollemans meets the recited limitations as long as it is capable of doingg the above.)

4. Claims 3, 6, 8 are rejected under 35 U.S.C. 103(a) as being Unpatentable over Hollemans et al. (US 2007/0036363 A1).

Re claim 3, the headset according to claims 1, while, Hollemans et al. disclose of the channels and object for sensing and orientation (par[0024]), but, Hollemans et al. fail to disclose of the wherein a set of channels is configured as three sub-channels in a star configuration. However, official notice is taken the concept of having the set of channels is configured as specifically being three sub-channels in a star configuration is simply the inventor's preference. Thus, it would have obvious for one of the ordinary skill in the art to have modify Holleman et al. with the further arranging the channels with the

specifically being three sub-channels in a star configuration for creating further orientation dependent related contact.

Re claim 6, the headset according to claims 3, however, Hollemans et al. fail to disclose of the specific wherein two of the channels in the set of channels are arranged symmetrically relative to the horizontal and extend obliquely relative to the vertical, while the third channel extends horizontally. However, official notice is taken such limitation of arranging the channels wherein the specific wherein two of the channels in the set of channels are arranged symmetrically relative to the horizontal and extend obliquely relative to the vertical, while the third channel extends horizontally is simply the inventor's preference, thus, it would have been obvious to have modify Hollemans et al. by incorporating the specific wherein two of the channels in the set of channels are arranged symmetrically relative to the horizontal and extend obliquely relative to the vertical for obtaining the plurality of channels related sensor position.

RE claim 8, the headset having an electrical circuit comprising a circuit comprising a plurality of controls for adjusting the electrical properties of the headset, and wherein the functions of the controls change function in accordance with the orientation of the headset, wherein the circuit has incorporated therein a gravitation switch which is adapted to switch the functions of the controls to remain in the same orientation regardless of whether the user wears the headset on the right or left ear (see claim 6 rejection), said gravitation switch comprising at least one elongated channel and a pair

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of divergent channels extending there from to form a star-like configuration, the ends of said divergent channels including contacts configured to cause the functions to be swapped according to the ear on which the headset is worn (see claim 3 rejection).

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Disler Paul whose telephone number is 571-270-1187. The examiner can normally be reached on 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chin Vivian can be reached on 571-272-7848. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/D. P./

Examiner, Art Unit 2615

/Vivian Chin/

Supervisory Patent Examiner, Art Unit 2615